

Testimony of President Joe Shirley, Jr.
Before The Senate Committee on Indian Affairs
on
S. 1003 - The Navajo-Hopi Land Settlement Amendments of 2005

Good Morning Chairman McCain and Ranking Member Dorgan. I thank you for the opportunity to discuss the Navajo-Hopi Land Settlement Amendments with the Committee this morning. My name is Joe Shirley, Jr., I am the President of the Navajo Nation. The Navajo Nation last appeared before this Committee regarding the Navajo – Hopi Land Dispute in 1996. Since then five Congresses and two Administrations have had little interest in the Navajo-Hopi Land Dispute. The Navajo Nation and the Hopi Tribe, during that same period, have made significant progress by working in a more collaborative approach with each other to resolve aspects of the land dispute. These joint efforts between the Navajos and Hopis appears to be moving both tribes to the conclusion of the land dispute. Following passage of the Navajo-Hopi Land Dispute Settlement Act of 1996 and this Committee’s consideration in the 104th Congress of S. 2111, a bill with similar intent to this bill, there has been no action by this Committee regarding the Land Dispute. I welcome this opportunity to discuss the current status of these matters with the Committee.

The Navajo Nation understands from the introductory comments of Chairman McCain that he is concerned that the relocation process has cost far more than originally estimated and taken too long to complete. The Navajo Nation vigorously opposed the Navajo-Hopi Land Settlement Act of 1974 (“relocation law”) before its passage and actively sought its repeal for years afterward. The Navajo Nation unfortunately failed in these efforts. Had the Navajo Nation been successful, the Navajo people would have been spared a tremendous harm and the Federal

government would have been spared a great expense. That said, now that the Navajo people have had to live through the nightmare of relocation, we do not think Federal budgetary issues alone should be a basis for limiting funds to complete the program, and doing so in a way that brings humanity to what has otherwise been an inhumane process. The Chairman is concerned with cost. I ask the Committee to consider how they would estimate the cost of moving an entire town, and how they would value the economic and social upheaval such a move would impose? This is what happened to the 12,000 Navajos who lost their land, their livelihood, and their identity. 12,000 people; approximately the population of Kingman, Arizona. How much would it cost to relocate the entire population of Kingman, to the Phoenix area? One billion dollars? Two billion dollars? How long would it take if the funds were appropriated bit-by-bit over 30 years? What would be the impact if the land these people were expected to relocate to was already populated? What would happen if these people suddenly had to unlearn their skills as farmers and learn to survive in a cash economy? How long would be too long? How much would be too much?

By far the greatest cost of the relocation program has been housing; the majority of which has been completed. The costs that remain relate to items that support the relocation process or “assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed” by the relocation law (25 U.S.C. 640d-25) and are, therefore, very important.

Since 1996, the Navajo Nation and the Hopi Tribe have settled three major pieces of litigation: The Use Case that arose from 25 U.S.C. § 640d - 17(a) (2); the Damage Case that arose from 25 U.S.C. § 640d - 17 (a) (3); and the Tax case that arose from 25 U.S.C. § 640-d7 and the continued joint ownership of minerals between the Navajo Nation and the Hopi Tribe. The Use and Damage Cases concluded in 1999 when the Navajo Nation paid the Hopi Tribe

\$29.1 million, and the Hopi provided the Nation with Satisfactions of Judgment in both the Use and Damage Cases. Nothing remains of these lawsuits. Similarly, in 2002, the Navajo Nation and the Hopi Tribe settled the Tax Case with a significant payment, equal to one-half of the taxes from the Black Mesa Mine through 2007 were paid by the Nation to the Hopi Tribe.

Currently, with some assistance from the Office of Navajo and Hopi Indian Relocation (OHNIR) the Hopi Tribe and the Navajo Nation are near resolving the final aspects of relocation without any Navajo evictions from the Hopi Partitioned Land (HPL). One of the more significant issues presented by S. 1003 in relation to this potential for forced evictions is one of timing. Currently, S. 1003 requires OHNIR to certify eligibility of all outstanding claims by September 30, 2005. I understand that this date will be revised to September 30, 2008, such a change should avoid the need for any forced relocation of Navajos because the contemplated agreement can be implemented. Ideally, if more time is needed to complete these efforts with the specter of eviction that time should be afforded. This is especially true where interested parties are working together to complete difficult tasks.

Another major concern of S. 1003 relates to the Navajo Nation's need and ability to address the impacts of both the 1966 Bennett Freeze, and the 1980 Statutory Freeze in the western portion of the Navajo Nation. Between the administrative and statutory prohibitions on development the Nation is faced with approximately 1.5 million acres of its reservation that have had no meaningful development since before 1966. In 1997, The Navajo Nation and the Hopi Tribe entered into a stipulation in the District Court that limited the development ban to approximately 700,000 acres that are currently subject to pending litigation. Upon resolution of the 1934 Act Reservation Case presumably the ban on development will cease, but these lands and its approximately 5000 residents will require special attention to bring them up to the

standards of other parts of the Navajo Nation. It is my understanding that the Committee has chosen to address the Bennett and Statutory Freeze issues in subsequent legislation and not in S. 1003. I therefore raise these issues to reinforce their importance to the Navajo Nation.

S. 1003 raises other areas of specific concern including:

First, rehabilitation efforts should be focused on the Navajo Partitioned Land (NPL). The NPL Navajo communities have borne much of the cost of the relocation, having absorbed thousands of relocatees and their livestock in an area that has long been at, or over, capacity. The NPL's extremely limited infrastructure, already overtaxed by the influx of relocatees, was further constrained by the construction freeze that was in place from 1963 until approximately 1979. This infrastructure continues to be grossly insufficient to meet the current needs resulting from the relocation law.

Second, the relocation law currently authorizes the Commissioner to make grants "which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens" of the law (25 U.S.C. 640d-25). S. 1003 would strike this provision (Section 122), but this is the very provision that provides ONHIR the flexibility to address the needs of families and communities as they arise. Pursuant to this provision, the Navajo Nation has proposed various projects such as a community center for the Navajo families that have signed Accommodation Agreements with the Hopi Tribe, range and road improvement, power line extensions, and some housing improvement for heavily impacted NPL host families. Although ONHIR has not yet approved any of these proposals, they are exactly the kind of projects that bring humanity to the relocation process while addressing the real needs that resulting from the process. Notably, the draft substitute bill that the Committee staff have released would restore the discretionary fund authorized by this section, but would not retain the directing guidance that the funds are to be

used to “assist the Navajo Tribe or Hopi Tribe in meeting the burdens” of the law. The legislation should preserve this guidance.

Third, the Navajo land selections in New Mexico should not be prejudiced. Section 107(c) of S. 1003 provides that the authority of the Commissioner to select lands in New Mexico shall terminate on September 30, 2008. Since the Commissioner’s authority would terminate on that date, it is not clear that this authority would continue in the new Office of Relocation at the Department of the Interior. The Navajo Nation has not yet completed its New Mexico land selections due largely to circumstances beyond its control. Completion of some of those selections is the subject of legislation introduced in this Congress, specifically S. 692, the Bisti/PRLA Dispute Resolution Act. The Navajo Nation is concerned that this provision in S. 1003 could impact that selection process and potentially prejudice Navajo interests. This authority should be carried over in to the Department of the Interior if the selections are not completed by September 30, 2008.

Fourth, the transfer of ONHIR’s Responsibilities to the Department of the Interior. ONHIR has developed critical and hard-won experience in working on and near the Navajo Nation and is ideally suited to addressing the rehabilitation of the Bennett and Statutory Freeze areas. Based on this institutional knowledge ONHIR should not be eliminated, although it certainly can be downsized. However, whether ONHIR is maintained, or its responsibilities are transferred to a new Office of Relocation in the Department of the Interior, it is critically important to the Navajo Nation that the issues set forth above are adequately and fully addressed. Only by completing all the necessary tasks can this chapter be closed without future repercussions.

I strongly believe that all Navajos want to put the Land Dispute with the Hopis behind

and move forward. In order for the Nation to do that, the final tasks that will complete Relocation in a just and humane fashion must be accomplished. One alternative approach that the Committee may want to consider rather than S. 1003 as presently crafted, would be to evaluate and enumerate all the tasks that ONHIR needs to perform to finish its tasks, with input from the Navajo Nation and the Hopi Tribe, then set out a reasonable time-frame to accomplish those tasks. That time frame could be used as a period that begins after passage of the legislation to complete the tasks identified. Such an approach may not have worked prior to 1996, but in the present collaborative era the Nation, ONHIR, and the Hopi Tribe can devise a plan to take these final steps. The Navajo Nation wants this dispute behind us, but we do not want to leave individuals behind.

In addition to my comments, the Navajo Nation Attorney General has prepared comments on certain specific legal issues presented by S. 1003. Those matters are also of special concern because of their impact on cases currently pending in the Courts or the impact these provisions may have on individuals seeking relocation benefits. Roman Bitsuie, the Executive Director of the Navajo-Hopi Land Commission Office, will discuss the efforts of the Office to serve the relocatees.